JF 493
.U6 J3
1912
Copy 1

# WHICH CHARTER?

BY

FRANCIS BACON JAMES

# WHICH CHARTER?

BY

FRANCIS BACON JAMES

Author of "Ohio Law of Opinion Evidence"; "Cases on Construction of Statutes" and "Advertising and Other Addresses"; Ex-President Union Board of High Schools; Ex-President Ohio State Board on Uniform State Laws; Formerly Chairman Committee on Commercial Law Commissioners on Uniform State Laws in National Conference; Formerly Dean of the Cincinnati College of Finance, Commerce and Accounts; Member of the General Council and Chairman Committee on Commercial Law of the American Bar Association and Instructor in Interstate Commerce Cincinnati Law School.

1912
PUBLISHED BY
Trade and Transportation Bureau
Washington, D. C.

12-23683

JF493
.U6J3
1912

## Preface

The history of the Anglo-Saxon race is a story of the growth of a democracy of the people, for the people and by the people through their representatives in the four great departments of Government —Executive, Legislative, Judicial and Administrative. The principles of a representative democracy recognize the great economic truth of a division of labor and corresponding efficiency in administration. The spirit of political anarchy now alive in the land seeks to unsettle the fundamental truths of representative democracy. In the following pages an attempt has been made to codify as a *reductio ad absurdum* these prevailing politically anarchistic views (colored somewhat like a chart to bring out clearly the lines of demarcation) under the title of "A Charter of Anarchy," and in order to bring the thoughts of our people back to fundamental truths, to present herewith as a contrast thereto the Constitution of the United States as "The True Charter of Democracy." Our citizens are admonished, in the present crisis of our national affairs, to read and study the latter and contrast it with the spirit of political anarchy now prevailing.

FRANCIS BACON JAMES.

*Cincinnati, Ohio, and Washington, D. C., August 1, 1912.*

## Table of Contents.


| | | PAGES |
|---|---|---|
| I | A Charter of Anarchy | 3 |
| II | The True Charter of Democracy | 6 |
| III | The Abnormal in Law Making | 25 |


TRANSFERRED FROM
DOCUMENT DIVISION
AUG 30 1912

# A Charter of Anarchy

## Article I.

### BILL OF RIGHTS.

Section 1. All citizens are equal physically, intellectually, morally and spiritually.

Section 2. Treason shall consist only of denying the equality physically, intellectually, morally or spiritually of any citizen of the United States, and no person shall be convicted of treason except upon hearsay evidence.

## Article II.

### QUALIFICATION FOR AND TERMS OF OFFICE.

Section 1. Each citizen is hereby declared to be equally qualified with each other citizen to discharge each and every function of Government, to wit: Executive, Judicial, Legislative and Administrative. No person shall be deprived of his full and equal participation in the discharge of each of said functions.

Section 2. Frequent rotation in office is essential to free government, because persons occupying office become too efficient in their respective departments, thus tending to destroy the equality of the people, and therefore the right of any person to remain in any office shall at all times be subject to popular vote. It shall be the duty of Congress to provide for the easy recall of such people as from time to time manifest efficiency in their respective offices, and thereby endanger the Republic. This is particularly true of the Judiciary.

## Article III.

### THE LEGISLATURE.

Section 1. Deliberative bodies are dangerous to popular rights. The habit of deliberation leads to the thraldom of the people, while the Republic should be governed by impulses of the heart. For fear that Congress may become a deliberative body, Congress shall have no power to enact legislation,

but shall have power to propose legislation, which shall be submitted to the vote of the people on referendum. If measures so proposed receive two-thirds of the entire vote cast same shall become a law.

Section 2. As all legislation is best which comes direct from the people, any person shall have a right to propose legislation and an election shall be had thereon, and if a majority of those voting upon the proposed legislation are in favor thereof same shall become a law.

## Article IV.

### THE JUDICIARY.

Section 1. The Judicial Bench be and is hereby abolished, and there is substituted in lieu thereof the Judicial Couch. Judges shall no longer sit upon the wool sack, but shall recline upon feather mattresses of the Judicial Couch during argument, so that their ears may be near the ground and that they may quickly catch vibrations of public sentiment. Congress shall provide each Judge with a ground-o-graph, which shall connect the judicial ear with the ground, so that the Judiciary shall be responsive to the wishes of the people in deciding each particular case.

Section 2. The people shall be the sole and exclusive judges as to whether there has been any violation of any limitations contained in this instrument and no judgment of any Court shall be final. Upon the petition of any ten persons, a recall of any Judicial decision shall be deemed demanded. On such demand the question shall be referred to popular vote and the decision of a majority of those voting on the question shall be final.

Section 3. It is better that ninety-nine innocent men should be convicted rather than one guilty man should escape. By reason of nefarious lawyers securing the acquittal of persons accused of crime, all prosecutions shall be upon information of any ten citizens. It shall be sufficient if said information sets forth that the accused has been guilty of a crime. The first witness to be called shall be the

accused, and the burden of proof shall be upon the accused to prove that he has committed no crime. Owing to the inconvenience of procuring witnesses it shall be sufficient to confront the accused with hearsay evidence. If the accused shall be acquitted, then upon the petition of ten citizens the question of guilt or innocence shall be referred to the people, and the people shall then vote upon the question whether the accused is innocent or guilty of any crime and a majority of the persons voting on said question shall be sufficient to convict.

Section 4. That the rule of reason be and the same is hereby abolished and there is substituted in lieu thereof the rule of popular impression.

Section 5. The right of the people to hold the courts in contempt is inalienable.

## Article V.

### PREDATORY WEALTH.

Upon the petition of any citizen of the United States an election shall be had to determine whether any particular business corporation is a good corporation or a bad corporation, and if upon a majority vote of the people upon the question it shall be determined that such corporation is a bad corporation, said corporation shall be immediately dissolved, its property forfeited and disposed of to the highest bidder, and the proceeds thereof turned into the public treasury.

## Article VI.

### TITLES OF NOBILITY.

Any person who shall admit that he has all the virtues and political attributes of George Washington or Abraham Lincoln or both shall have conferred upon him a title of nobility. Such title shall consist of the words "Sir Ego."

# The True Charter of Democracy

## The Constitution of the United States of America.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

### Article I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

*[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least

*The clause included in brackets is amended by the fourteenth amendment, second section.

one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose,

they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside; And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of Absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and Post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Offices, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## Article II.

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

*[The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately choose by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner choose the President. But in choosing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be

*This clause has been superseded by the twelfth amendment, p. 49.

the Vice-President. But if there should remain two or more who have equal Votes, the Senate shall choose from them by Ballot the Vice-President.]

The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice-President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice-President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power

to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice-President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

## Article III.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold

their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party; to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## Article IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## Article V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

## Article VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## Article VII.

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty-seven and of the Independence of the United States of America the Twelfth, In Witness whereof We have hereunto subscribed our Names.

GEO. WASHINGTON,
*President and Deputy from Virginia.*

---

## Articles in Addition To, and Amendment Of, the Constitution of the United States of America, Proposed by Congress, and Ratified by the Legislatures of the Several States, Pursuant to the Fifth Article of the Original Constitution.

### [Article I.]*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### [Article II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

### [Article III.]

No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

*The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the various States, and the notifications of ratification by the Governors thereof were successively communicated by the President to Congress.

[Article IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[Article V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[Article VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[Article VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[ARTICLE IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[ARTICLE X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICE XI.*

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

ARTICLE XII.†

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of

*The eleventh amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress on the 5th of March, 1794; and was declared in a message from the President to Congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

†The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article; and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

## Article XIII.*

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof

*The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States.

the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

## Article XIV.*

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced to the propor-

*The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore, Resolved, that said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six States.

tion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## Article XV.*

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude—

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

---

*The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States.

## The Abnormal In Law Making*

Legislation is merely adding legal sanctions to the principles of sociology. When those charged with power to make laws select a sanction reasonably adequate to enforce such a principle and when such principle has been ascertained by inductions neither too broad nor too narrow, including human nature and sound ethics, such legislation is normal. When, however, the principle is ascertained without thoughtful research and is impractical in its application, then such legislation is abnormal. This can be illustrated by the blue laws of the Colonial days; the alien and sedition laws of Adams' administration; the silver purchase act; some provisions of the contract labor law, and various features of the anti-trust law. The most recent attempt at the abnormal in law making is the proposed amendment to the Constitution of Ohio providing for the initiative and referendum and will form the body of this address.

From time immemorial laws have been made either directly by the sovereign or indirectly by a representative deliberative body. Law making is direct legislation whether the sovereign is an absolute monarch or whether the sovereign is a body of people. In Russia until the last few years laws were made directly by the Czar without the intervention of a deliberative body. It has been a fundamental principle of the Anglo-Saxon race "from the time whereof the memory of man runneth not to the contrary" to have laws framed by a representative deliberative body. The Magna Charta signed by King John, June 15, 1215, guaranteed that the people should "have the common council of the Kingdom," which came afterward to be known in the reign of Henry III as "the Parliament." The principle of a representative deliberative body to frame laws received the sanction of the Petition of Right in 1628 and the Bill of Rights in 1689. The Declaration of Independence complained against King George for "suspending our

*This address was delivered by Mr. James at the annual dinner of the Cincinnati Chapter of the American Institute of Banking, Havlin Hotel, Cincinnati, Ohio, Tuesday evening, March 24, 1908. —Publishers.

own legislature and declaring themselves vested with power to legislate for us in all cases whatsoever." The Revolution successfully contended against the power of the British sovereign to directly legislate for the people of America and in favor of indirect legislation by a representative legislative body. The query is not whether one is for or against the initiative and referendum, but whether he is for or against legislation by the initiative and referendum. There are governmental affairs in which the referendum is proper, but not as a method of law making. Law making by the initiative and referendum is the most dangerous innovation ever presented to the American people. The constitution of a State is a social compact binding the citizens together into a political unit, and therefore is a proper subject for a popular vote. The constitution, however, merely defines the departments of government and imposes limitations on the exercises of the powers of each, and is more or less permanent in its nature. The referendum is also proper in giving or withholding support to administrative acts vitally and irrevocably affecting for an extended period of time all the members of a local community.

Law making includes the science of ethical compromises. Laws merely reflect social and economic conditions. On these there is always a marked difference of opinion. When these differences are irreconcilable and stubbornly divide a community, it brings unrest and an evasion of law by one-half of the community and creates a distrust of all laws. When a community is sharply divided on its economic and social views, there should be some method of arbitrating differences on a fair basis. A deliberative body is the best ever created for that purpose. Debate, discussion and criticism tend to modify the views of each arbitrator and bring about legislation which is not too radical to either side; such body is not compelled to accept or reject a single proposition, but may consider alternative propositions and take the best from all. When these conflicts between inconsistent views pass through a single deliberative body it has been found that such a body is frequently too responsive to popular im-

pulse, prejudice and passion. The Anglo-Saxon race wisely devised a second deliberative body with a veto power in an executive as a check on hasty action. Under this system of representative government with proper constitutional limitations on the exercise of its powers, America has grown great commercially, politically, morally and socially. It is now proposed to substitute in place of this deliberative body direct legislation by the direct vote of the people. In other words, that a small class of the people may project a proposed law which the people must accept or reject without change with no alternative between one measure and another upon the same subject and if criticism shows a measure is badly drawn or defective, it must be accepted or rejected as an entirety without change. The cry has been raised that if the representatives cannot trust the people, the people cannot trust their representatives. In this statement is involved a fatal fallacy. The people are more accustomed to study human nature than they are to study the details of a human measure. Government by the people does not mean that each citizen must perform each function of government. In the affairs of life there must be a division of labor. Representative government is merely a recognition of this economic principle. This palpable fallacy has been aimed at the executive and will next be aimed at the judiciary. It is proposed that executive officers shall be paralyzed by the "recall" and the next step in the anarchistic program will be a review of judicial decisions by a popular vote.* History has demonstrated that a free government cannot exist without an independent judiciary, an independent executive and an independent legislative body. Each citizen cannot perform all the functions of government. Supposing, for example, there was a pipe to be laid on the streets of Cincinnati or an engine to be run in the water works. No sane person would trust all of the people to lay the pipe or run the engine; that there must be a division of labor and the most skilled selected to perform these

*It will thus be seen that Mr. James prophesied a propaganda for the recall of judicial decisions on March 24, 1908, nearly four years before being promulgated by Col. Theodore Roosevelt at Columbus, Ohio, February 21, 1912.—Publishers.

duties. It has not been many years since Coxie's army marched into Washington and claimed that the land about the Capitol belonged to all the people and each member of Coxie's army had a right to step on the grass. To have encouraged this vandalic principle would be destructive of all government. It would give the right to any citizen or all citizens to take seats upon the bench of the Supreme Court of the United States, while in session; to enter upon the most secret conferences at the White House; to interrupt the sessions of a legislative body and occupy the seats of the members. We can trust all the people and all the people can trust our representatives. We cannot trust all the people to perform all the functions of government. A division of labor is necessary. In addition to the initiative, an unrestricted referendum is proposed. In other words, every time a law is passed a small minority of the people will be given the right to secure its suspension and an ultimate vote. Such a method of government will paralyze the independence of the legislature. Every measure enacted in the wisdom of a deliberate body will be at the mercy of any five or ten per cent. of the voters. It is hard now to get men to serve in official positions because of the freedom with which their motives are attacked. The referendum is merely a new method of amplifying attacks upon normal legislation. Law making by the initiative and referendum is no experiment. It has been tried and experience condemns it. It has been argued that law making by the initiative and referendum would work well in small communities by securing the popular approval or disapproval of laws. Switzerland is composed of twenty-two cantons, three of which are subdivided. No one canton contains more than five hundred thousand inhabitants. One of the cantons—Freiburg—the eighth largest in area and population, has resolutely refused to adopt direct legislation and has consistently adhered to making laws through a representative body. In five of the cantons laws are made at town meetings. It is said that in one of these cantons ten thousand voters gather annually in the public square and vote yes or no on proposed

measures by the raising of hands. In eleven cantons the referendum is compulsory; in other words, the legislative body has no power to enact laws, but must submit all of them to popular vote. In eight cantons the referendum is optional at the request of a percentage of the electors. No measure has ever received a popular majority in Switzerland. An attempt was made to enforce a popular majority by passing criminal laws making it a crime for an elector not to vote. The voters, however, would not be coerced, and went to the polls and cast blank ballots. The politicians of Switzerland are now making an effort to pass a law to pay every man who votes and marks his ballot. In some cantons they enact a new constitution each year, thus overthrowing and destroying all stability of government. Oregon is now trying the experiment, and at the coming election nineteen separate propositions will be submitted to popular vote. Experience in Oregon has shown that the measures proposed by the initiative are crude and ambiguous, thus adding to the already over perplexing problems of bad legislation. The new Oklahoma Constitution is a failure and the referendum defeated in practice by each measure being marked an emergency one, which withdraws it from the referendum. Thus the legislature of Oklahoma in its wisdom after reflection has practically repudiated the referendum.

The difference between a corporation and a government is that government is the enforced co-operation of the people and a corporation the voluntary co-operation. The American form of government is a political democracy; a corporation is an industrial democracy. As the State has its Governor, Legislature and electors, so a corporation has its president, directors and stockholders. The Governor corresponds to the president; the Legislature to the directors; the electors to the stockholders. The fallacy of the initiative and referendum in governmental affairs can be illustrated in corporate affairs. According to the advocates of the initiative and referendum, each citizen has a right to exercise all the functions of government, and, by analogy, each stockholder would be entitled to perform all the powers of a corporation. The cry could be

made that if the directors did not trust the stockholders, the stockholders could not trust the directors. By the referendum in law making it is proposed, on petition of a small per cent. of the electors, the action of the legislature can be suspended. Applying the same principle to a corporation, each proposed act of the directors could be suspended by a small per cent. of the stockholders. In other words, any 5 per cent. of the stockholders could paralyze the work of a corporation. The dangers of such a condition could be seen in a large railroad corporation with numerous stockholders, the majority of whose stock was not held by a single individual. The difference between legislative measures and administrative acts can also be illustrated by the corporation. Any proposed act of a corporation which affects the vital rights of all stockholders is by universal custom and in some States by law submitted to a vote of stockholders, such as a bond issue or increase of capital stock. The referendum may well be useful in government as to such administrative acts as issuing bonds or granting franchises. A law can be passed today and repealed tomorrow. Franchises, however, granted today must exist without repeal until the termination of the period of time for which they are granted; a bond until it is extinguished by payment. The issuing of bonds and granting of franchises are not acts of law making, but merely administrative acts, affecting all the citizens of a community.

Those who are aggressively supporting the initiative and referendum do not look upon it as an end but as a means to carry out theories destructive to our existing institutions. It is known that many of those who have been aggressively canvassing the State are believers in socialism, the abolition of private ownership of land, and establishing government ownership of railroads. It is sought not only to destroy representative government in the States, but a National Referendum League has been formed to destroy representative government in the nation. Nothing has ever been devised to bring about unsettled conditions of commerce and trade as such a proposition. Supposing, for example,

Congress should enact a tariff law with twenty schedules. These schedules would not please all the people. There would undoubtedly be groups of 5 per cent. of the people dissatisfied with each schedule, and each group could file a petition to submit each schedule to popular vote. The effect of filing the petitions would be to suspend the tariff law and stop the revenues of the Government. It would keep the whole industrial nation unsettled, before the filing of the petition as to whether a petition would be filed, after the filing by a suspension of the tariff law, and after the suspension a feeling of uncertainty whether the popular vote would be for or against each or all of the schedules. At the same time 5 per cent. of the electors could submit a measure for a debased currency of sixteen to one and another for an irredeemable paper currency. You can always find 5 per cent. of the people against the government; you can always find 5 per cent. of the people moved by a yellow journal or a yellow demagogue—the initiative and referendum giving each a new field.

Like all things human, no form of government is perfect. Instead of destroying a time honored institution, seek to reform it. Three evils of representative government arise from the fact that our representative bodies are too large, terms of office too short and compensation too low. Our representative bodies should be filled with men of experience in the various walks of life and not by amateurs merely seeking notoriety. Do not destroy our representative system, but improve it. The pessimist mournfully croaks, "Progress and Poverty"; the optimist cheerfully cries, "Progress and Prosperity."

LIBRARY OF CONGRESS
0 012 050 547 6